

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

)	
)	FIRST AMENDED
IN THE MATTER OF)	SPECIAL RULING AUTHORIZING
APPLICATION FOR)	THE TEMPORARY ISSUANCE OF
FESTIVAL EVENT PERMITS)	CERTAIN FESTIVAL EVENT PERMITS
)	
_____)	

BY THE DIRECTOR:

The Division of Alcoholic Beverage Control ("ABC" or "Division") has received requests for opinion letters, permits, waivers and other authorizations to permit various types of Alcoholic Beverage Festivals. The ABC has also reviewed advertisements for and investigated "events" that may not have been in compliance with statutory and regulatory requirements.

These Festivals have become very popular with the growing awareness of New Jersey wines and with the growth of small craft breweries and distilleries. Requests seeking authorization to conduct Festivals have come from various entities, some of which have not held a license or permit.

Also troubling is licensee and permittee sponsorship or participation in these events when the operation may violate New Jersey statutes, regulations or other legal obligations of a licensee. Some examples of potential violations include, but are not limited to the following:

1. The use of third party promoters who share in proceeds from the sale of alcohol and are neither licensed nor controlled by the licensee, and;
2. The practice of allowing unlimited samples, potentially in violation of N.J.S.A. 33:1-12(d), and;
3. The practice of allowing an unlimited availability of alcohol for a set price in violation of N.J.A.C. 13:2-23.16, and;
4. The sale, service or delivery to, or consumption by, persons who are underage and/or actually or apparently intoxicated in violation of N.J.A.C. 13:2-23.1.

Conversely, many of these events have been conducted responsibly and in conjunction with legitimate educational and entertainment components. After further consideration by this Division, it has been determined that conditions can be imposed on

these events that will address the statutory and regulatory concerns. Absent authorization and imposition of conditions, these events would otherwise be prohibited.

Therefore, in order to establish a uniform criteria and to insure compliance with states and regulations, I will authorize the issuance of Festival Event Permits under the requirements set forth in Schedule "A" permitting unique and *bona fide* Festival Events that might otherwise be prohibited. Further, this Special Ruling will allow the Division to collect data and information as the basis for the development of regulations.

Moreover, failure to receive a permit for a festival event may subject organizers to prosecution for regulatory or statutory violations.

Accordingly, it is on this 22 day of August, 2014,

ORDERED, pursuant to N.J.S.A. 33:1-39 and N.J.S.A. 33:1-74, that the Division does hereby establish an Alcoholic Beverage Festival Event Permit and; it is further,

ORDERED, applicants for an Alcoholic Beverage Festival Event Permit shall comply with the terms and conditions in the attached Schedule "A," as may be amended from time to time and; it is further,

ORDERED, that this ruling shall be effective for 18 months unless extended by my further Order and; it is further,

ORDERED, that the fee for such Festival Event Permit shall be \$1,000.00 for each consecutive day or part of day of the event, subject to a maximum of \$2,000.00 and; it is further,

ORDERED, that all licensees, permittees and promoters shall be liable for any violations of the Alcoholic Beverage Control Act and/or the regulations promulgated pursuant thereto, and it is further

ORDERED, that nothing herein shall be construed to allow the use of promoters in circumstances other than authorized by a festival permit issued pursuant to this Order and Schedule A attached hereto, and it is further,

ORDERED, this ruling and the attached Schedule "A" may be withdrawn or modified by the Director at his discretion.



Michael I. Halfacre
Director

SCHEDULE "A"

Consumer alcoholic beverage festivals

(a) Definitions:

1. "Festival" means an indoor or outdoor scheduled gathering, function, occasion or event that shall be sponsored or hosted by either a retail consumption licensee, concessionaire permittee, or a social affairs permittee wherein small samples of an alcoholic beverage are available from multiple offerings from multiple suppliers, served for a single admission price or "per sample" price, and/or where the Tasting and Sampling statute (N.J.S.A. 33:1-12d) and Regulation (N.J.A.C. 13:2-37.1) are not adhered to.

A "festival" may or may not have a third party *promoter* involved for the purpose of organizing or serving, in any capacity, to create the event, but *if* a third party *promoter* is involved in such manner the event shall be deemed a "festival."

Nothing herein shall prevent a social affairs permittee from making application for a social affairs permit where the event does not meet the definition above.

2. "Third party promoter" means a person or entity engaged to assist in operating and/or organizing the festival for a fee.

- (b) Consumer alcoholic beverage festivals may only be hosted by a consumption licensee, concessionaire permittee or social affairs permittee. (hereafter, "festival permittee") under the following conditions:

1. The Festival Permittee shall hold an actively operated license or a valid permit authorizing sales of alcohol for immediate on-premises consumption. Further, Festival Permittees, as Licensees or Permittees, shall at all times be in control of the event and the premises and responsible for same;
2. All festival attendees consuming alcoholic beverages must be at least twenty-one (21) years of age;
3. The festival must provide an educational component relating to the type of alcohol being served or promoted at the event;
4. All alcoholic beverages used or consumed at a festival shall be brand-registered, stored securely with all transportation permits intact and purchased in accordance with all the Division laws and rules;
5. For an initial festival application, the Division must receive the completed application sixty (60) days in advance of the festival date; thereafter,

future applications made by the same host shall be made thirty (30) days in advance of the festival date;

6. A festival session shall not be longer than four (4) hours in duration, but multiple sessions separated by at least a one hour break are permitted provided attendees are not permitted to attend more than one (1) four hour session per day. The Director may extend a session for up to one hour upon a showing of good cause;
7. Title to all alcohol to be available at the festival must pass from the licensed supplier or wholesaler to the Festival Permittee prior to service to the festival attendees. No alcohol, neither an open sample nor sealed container, may be removed from the site of the festival unless the seller has the privilege to sell to the public at such an event, as in the case of a New Jersey Winery;
8. Festivals shall last no longer than three (3) consecutive days;
9. A consumption licensee, concessionaire licensee or social affairs permittee, as the "host" or "sponsor" of the festival, shall only be allowed to conduct up to two (2) festivals within a calendar year per licensee or permittee and only four (4) festivals per year per licensed premises; and
10. The categories for festivals are: malt alcoholic beverage, wine, distilled spirits, or some combination thereof.

(c) Sample sizes for use at a festival are as follows:

1. Two ounce samples for malt alcoholic beverages
2. One ounce samples for wine
3. One-half ounce samples for distilled spirits

(d) All pourers/servers shall be supervised by an employee who is TIPS/TAMS certified or the equivalent. All pourers shall be an employee or agent of a licensee or permittee. Agents or employees of a brewer, distiller, winery or wholesaler may also pour. However, if the brewer, distiller, or wine-maker is not a New Jersey licensee/permittee, the pourer shall be considered an employee or agent of the licensee/permittee to whom the festival permit is issued.

(e) By definition a festival involves multiple suppliers (distillers, breweries, wineries, etc.). A minimum of fifteen (15) participating suppliers shall be necessary to conduct a festival.

- (f) A festival shall have sufficient food and non-alcoholic beverages available, whether complimentary or for purchase.
- (g) At least sixty (60) days in advance of an initial festival, festival applicants must submit a completed application, together with the non-refundable filing fee, which application shall include, but not be limited to the following:
 - 1. The consent of the Municipal Clerk and Police Chief of the municipality where the festival is taking place. In addition, if the festival is taking place in or on publicly owned or controlled property, the consent of the political subdivision in control of the property and the Chief Law Enforcement Officer of the law enforcement entity with jurisdiction over the property must be obtained.
 - 2. A detailed security plan to assure general safety, as well as emergency medical assistance. The plan must provide for the following: age verification; "pass-off" control; prevention of intoxication; compliance with regulatory requirements on sample sizes; identification of security personnel, duties, numbers and experience; confirmation that all servers shall be employees of the applicant and that each serving station will be directly supervised by an identified TIPS/TAMS or similar certified person acceptable to the Director.
 - 3. A map or detailed sketch of the area where the festival is to take place shall be provided.
 - 4. A comprehensive event plan for the festival, including, but not limited to:
 - a) Complete information regarding any involvement of a third party promoter;
 - b) Explanation of the *required* educational component of the festival event;
 - c) Explanation and information relating to any entertainment and/or recreational activities included at the festival;
 - d) Dates, times, ticket and other pricing;
 - e) Identification of participating manufacturers or wholesalers of the featured products that will be serve; and
 - f) Description of food, non-alcoholic beverages, entertainment or other recreational activities that will be offered at the event, whether for sale or included in the admission price.

Be advised that the Director's evaluation will focus on regulatory compliance and policy concerns relating to public safety and preventing under-age consumption and over-consumption of alcohol. The primary purpose of the event should be educational and entertainment and not for the consumption of alcohol.

- (h) In order for a third party promoter to participate in the festival said promoter shall first meet the qualifications of a licensee, permittee or employee of such, under N.J.S.A. 33:1-26 prior to the festival event.
- (i) If a promoter will be involved in a festival, it shall be mandatory that a complete copy of the promoter's contract be provided to the Division prior to the festival event. Generally, third parties such as promoters or other entities **may not receive a percentage of profits or exert control over the festival permittee's activities or employees.** Exceptions for unique events and extraordinary circumstances may be considered by the Director on an extraordinarily limited basis.
- (j) Please be advised that the Division will require a post-event accounting documenting all alcohol purchases, other payments, purchases and costs as well as the allocation of any proceeds within fifteen (15) days of the event. The post-event accounting will also include a summary of any incidents requiring security or police intervention, such as fights, theft or incidents of alleged intoxication or underage service or consumption, whether or not security or law enforcement was involved.

Failure to comply fully with these disclosure requirements and explain said incidents will result in denial of future permit applications, or in the case of a promoter, disapproval of participation in future events.

- (k) Upon receipt of a completed application and fee, and after initial review, the Division will schedule an in-person conference with the applicant and interested parties prior to issuance or denial of the festival permit. In the case of subsequent applications for the identical event, this requirement may be waived in the discretion of the Director.
- (l) A social affair permittee operating without the assistance of a promoter may seek a waiver or reduction of the application fee upon good cause shown.